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THE PROSECUTION OF MURENA

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L. Licinius Murena had been praetor in the year 65 B.C. In accordance with the legal requirement that there should be an interval of two years between the time of holding the praetorship and that of holding the consulship, he sought election in 63 for the chief magistracy of the following year. In addition to Murena, there were three candidates for the office, Servius Sulpicius Rufus, Decimus Junius Brutus, and Lucius Sergius Catilina. The story of this turbulent election is well known to all who are familiar with the history of Cicero's consulship. The election resulted in the choice of Murena and Silanus to be consuls for the next year. Immediately Catiline formed his plans definitely for armed rebellion, while Sulpicius in his disappointment turned to the law courts for satisfaction and instituted criminal proceedings against Murena for corrupt practices alleged to have occurred in his canvassing prior to the election.¹ The trial took place some time in November of that year, evidently a few days subsequent to the delivery of Cicero's second oration against Catiline. During the course of the trial of Murena, Cicero frequently alludes to the recent flight of Catiline from the city, but says that his lieutenants remained and might still cause much trouble to the state. Clearly this was spoken before the arrest and execution of the leaders of the conspiracy in Rome, an event which took place early in December of that year.

The plaintiff in the case against Murena, as already mentioned, was Sulpicius, who had three men as junior counsel, one of whom at least was famous. This was Marcus Porcius Cato, now tribune-elect, through whose vigorous argument, perhaps only two weeks after the trial of Murena, the penalty of death was inflicted upon the confederates of Catiline. A second assistant attorney for the

¹For the history of legislation upon corruption at elections see my article in *Classical Journal*, XI, 535 ff.

prosecution was Gaius Postumus, a knight, at this time a candidate for the praetorship. The least conspicuous member of the group was Servius Sulpicius Galba, a young man, probably a cousin of the plaintiff.

The case for the defendant was argued by three eminent patrons, two of them the acknowledged leaders of the bar at the time. The greatest of these three was Cicero, then consul, ably supported by Hortensius, Rome's most noted forensic orator with the exception of Cicero. The third was M. Licinius Crassus, who, like Hortensius, had already held the consulship. Crassus had now much political influence, and he was probably chosen by the defense more for this reason than because of his ability as a pleader, although he had also some reputation as a speaker. The praetor who presided in the case is unknown, for Cicero, contrary to his custom, does not once mention him in the whole course of his argument.

The charge made against Murena was that he had acted in violation of the terms of the Tullian law on bribery and corrupt practices, the measure proposed and carried by Cicero earlier in this same year. In particular, the following five matters were specified as justification for instituting action against Murena: first, that upon his return from his province, many persons went out to meet and welcome him as he entered Rome, and escorted him to his house; secondly, that a large escort followed him about while he was a candidate for the consulship; thirdly, that he exhibited spectacles free of charge to the people tribe by tribe; fourthly, that he invited crowds of the common people to dinners; fifthly, that he endeavored illegally to secure the votes of the centuries of the knights.

It is interesting to notice that both Sulpicius and Cato objected to Cicero's appearing in the case. The ground upon which Sulpicius based his objection was the purely sentimental one that he and Cicero had always been friends, and that it was contrary to the spirit of their friendship for Cicero to appear against him at this particular time. For some reason Cicero makes rather short work of this objection. But he seems to feel hurt by the attitude of Sulpicius, for he says that it is a serious matter to be accused by a friend in any situation, but that it is necessary to take notice of

it and make reply when one is attacked unjustly. He pays Sulpicius the high compliment of saying that, if friendship were to be regarded as the determining factor, no good advocate would appear against Sulpicius. He claims also that Sulpicius is guilty of the same attitude toward friendships, in that he gives advice in his civil law practice to those persons who are suing his own friends. Cicero furthermore points to his own friendship with Murena, and declares that he cannot leave his friend undefended when he is in trouble. And lastly, since the welfare of the state was involved in this case, he maintains that not even his active assistance of Sulpicius in the recent campaign could be of the slightest inducement to him to absent himself from the defense of Murena.

The argument made by Cato is more fundamental, and conducted along more logical lines, as one might expect from a man well versed in constitutional law, as well as from one whose whole life was ordered upon a reasonable basis. Cato raises two important issues. The first is that a consul should not appear in the case. We know of the argument only from the reply by Cicero, and that is unfortunate, for we should like to know in Cato's own words whether the point was that a public official should avoid practicing his profession while holding office. Cicero's reply is that it is reasonable for a consul to endeavor in any manner to prevent the state from falling into trouble in the future—and the exoneration of Murena was a case in point. If Rome had the habit, seen in some other states, of appointing a state attorney for the defense, it would be most appropriate that a consul should be appointed to defend a consul-elect. Cicero does not appeal to precedent in his own support, but it is worth noting that he had already, during his consulship, twice broken the principle which Cato apparently attempts to establish. First, he had defended Rabirius before the people in his famous trial for murder. If the principle was right, Cicero committed a more flagrant wrong in that case than in the case of Murena, for a special commission had been publicly appointed to try Rabirius, and yet Cicero appeared in his defense. And again, he was counsel for the defense in the case of Piso, who was prosecuted for malfeasance in office while governor of Gallia Narbonensis. It is probable that L. Crassus, in his consulship of

95 B.C., defended Caepio, charged with the same offense. Cicero had also, while praetor in 66, defended M. Fundanius, who was being prosecuted for some irregularity apparently while in office. In the same year he defended Cluentius on a charge of murder, and became counsel for C. Cornelius, who was to be tried for treason. This last case was not heard until the following year. And only six years earlier, Hortensius while praetor prosecuted P. Septimius Scaevola on the ground of extortion in the province of which he was governor. No doubt many other examples could be discovered, but these are sufficient to indicate that the nation accepted the principle of permitting public officials to engage in private enterprises while actually holding office. There is no record of an objection being raised in any of these instances.

But it is quite probable that Cato did not intend to imply that this was a broad principle of the constitution, or had become obligatory by custom. The reply of Cicero couples it closely with the second part of Cato's objection. This was that the proposer of any measure should not appear as counsel in a case arising under the provisions of that proposal, provided it were enacted into law. But legislation could formally originate only with the presiding officer of an assembly, and that meant only with an official of the state. So Cato's meaning comes to this, that an official of the state, who acted as presiding officer of an assembly, and formally proposed any measure, should thereafter be debarred from pleading in cases arising under that measure. But there are four cases recorded within the next ten years, in which Cicero appeared for defendants on this same charge, and two others in which he probably did so. It would perhaps be impossible to find another instance exactly like these, but there are some that could fairly be compared with them. For example, during the prosecution of Gabinius in 54 for extortion, Caesar sent a letter to Rome in behalf of Gabinius, although the trial arose according to the provisions of the law passed by Caesar himself only five years earlier. It is also known that Pompey interfered in trials of the year 52, especially in that of Q. Metellus Pius for corrupt practices, although he was the author of the law, regulating both the procedure and the penalties, by which Metellus was being tried. Undoubtedly it was by accident rather than by design

that no instances occurred where the authors of laws acted as counsel in cases arising under their own laws, or possibly it would be closer to the truth to say that no such instances are preserved to us. And yet it is easy to understand that the situation in the trial of Murena might seriously offend one so strict as Cato.

The order of speakers and events in the trial of Murena, according to the reasoning of Zumpt, was probably as follows:

I. In the first action: (1) opening speech by Servius Sulpicius, the chief prosecutor; (2) reply by Q. Hortensius; (3) the taking of evidence.

II. In the second action: (4) speech by C. Postumus; (5) speech by the younger Servius Sulpicius; (6) reply to these two by Crassus; (7) possibly the taking of further evidence; (8) speech by M. Cato; (9) reply by Cicero.

Cicero gives some account of the speeches of all four accusers, and says that the other two speakers for the defense preceded him. This necessitates placing Cicero last in the whole order of the trial, for as usual in criminal trials the defense followed the prosecution in summing up its case just prior to the voting by the jury. Nor is it probable that evidence was offered after Cicero had finished speaking, otherwise he would have referred to the fact that evidence would yet be given. If further proof that Cicero was the closing speaker is needed, we have it in the fact that he does not mention a single witness, nor does he definitely refer to the evidence that had been offered. He assumes that the facts in the case and the law are already known to the jury, and takes upon himself the function of putting together all the arguments, and reviewing the course of the debate among the six who had preceded him.

It would be natural to assume that the opening speech for the prosecution was made by the chief accuser, in accordance with Roman habit, but the only direct evidence for this assumption is the nature of the speech delivered by Sulpicius. Cicero's review of the speech, and of the reply by Hortensius, renders it obvious that Sulpicius opened the case for the prosecution, and that he was followed immediately by Hortensius. Since it was the custom to call witnesses as soon as the opening speeches had been delivered, we are justified in placing the taking of evidence in the third place.

Two facts lead us to place the speech of Cato immediately before that of Cicero. In the first place, it would be very unusual for two speeches to be given by the defense after all the argument for the prosecution had been finished, although provision was made for such a situation in the case of Milo. And, in the second place, Cicero replies at such length to the arguments of Cato that we cannot suppose that a reply had already been made by either Hortensius or Crassus. We are compelled, therefore, to place the two speeches of the minor counsel for the prosecution at the beginning of the second action, and to assume that the speech of Crassus followed and answered them. The only really doubtful part of the system is whether the trial should be divided into two actions. The case of Verres indicates, apart from other evidence, that this division occurred regularly in cases of extortion, but it cannot be proved that it extended to the other criminal courts. But that is a slight matter, and means merely that proof does not exist that an adjournment took place in the middle of the trial, although that would not affect a decision as to the order of events throughout the hearing of the case.

Cicero says that the attack upon Murena by counsel for the prosecution fell into three divisions: First, they attacked Murena's mode of life. Secondly, they reviewed the history of the contest between Murena and Sulpicius for the various offices. Thirdly, they showed what evidence existed that Murena was guilty of corrupt practices during the recent campaign. If we may judge by the words of Cicero in the concluding speech of the trial, the chief prosecutor, Sulpicius, spoke upon the first and second of these topics; Postumus and Sulpicius Galba spoke upon the third; while Cato, closing the case for the prosecution, reviewed all three points.

On the first of these points Sulpicius argued that Murena had spent much of his early life abroad in the wars, but without distinguishing himself; that he had merely endeavored to shine by reflected glory from the triumph which his father had gained through his victories in Asia; that this long absence from Rome had prevented him from gaining the acquaintance that was so important to one striving for political favor, unless his military achievements were sufficiently great to win him votes from those

not personally acquainted with him. On the second topic, Sulpicius reviewed the whole public career of Murena and of himself, in the effort to make it appear unreasonable to suppose that the electors would have voted for Murena rather than for him, unless some undue influence were exerted for the purpose of winning their votes. First of all, Murena was of a plebeian family, and from Lanuvium, while Sulpicius was a patrician, and always known in Rome. Sulpicius expressed his contempt for the family of Murena, and extolled his own. In the second place, while Murena had been so constantly absent from Rome in the field, conducting his minor military enterprises as lieutenant to Lucullus, and was neither gaining an acquaintance in Rome nor deriving fame as a soldier, Sulpicius was in Rome engaged in the practice of the law. He had always been before the eyes of the people, and had conducted an open canvass for the various offices. The result was that in the election for the quaestorship in 74 B.C., and in that for the praetorship in 65 B.C., for which offices the two men were candidates together, Sulpicius had been the first to receive the number of votes requisite for election. This showed the greater popularity of Sulpicius. For all these reasons, he argues, it is quite certain that the people would have chosen him in preference to Murena in this last election also, unless Murena had used some improper means to gain their votes.

We know very little about the speeches of Postumus and Sulpicius Galba, for they dealt with some of the technical proofs that Murena had been guilty of bribery, and the younger Pliny says that when Cicero revised his speech for publication he omitted some of the parts of the speech as he had delivered it. This seems to be confirmed by the fact that the manuscripts give only the heading of the sections which had been devoted to Cicero's reply to these two men. In other parts of the speech where the two junior counsel are mentioned the subjects of their speeches are given by Cicero so briefly that it is impossible to understand their significance thoroughly.

Cicero mentions in a very few words two topics in the speech of Postumus, but so briefly that even an accurate translation is impossible. The first topic may mean that Postumus discussed

“the evidence offered by Murena’s agents,” that is, by the agents employed by Murena for the distribution of money to his supporters. This would imply that the agents had been summoned by the prosecution to give evidence against Murena. Of course these men could be prosecuted for the same offense, through the enactment of the Calpurnian law four years earlier, but that law had created an exception, that one who turned state’s evidence and thereby secured the conviction of his principal would himself receive immunity. But it seems incredible that this took place, for it is hard to see how Murena could have escaped conviction if his agents had divulged anything of importance. And it may further be held that such revelations as they might make would be such interesting reading that Cicero would certainly include them in his published speech. This situation would offer a chance for his highest skill as a pleader, and he would not have allowed it to pass unpublished. We must, therefore, reject this meaning of the text. The alternative translation of the passage is, “the evidence given against Murena’s agents,” that is, evidence was offered to show that Murena employed agents. This seems to be the better meaning to assign to the words, and, if the evidence was not conclusive, there would be adequate reason for its omission in the published oration. Postumus also spoke about the discovery of certain moneys. Here again we are left with only those words, and their meaning cannot be ascertained with certainty. But the chances are that the right of searching houses, vested in Roman officials, is implied, and that the right had been used of searching the houses of Murena and his alleged agents, and that money was found in them. The amount was great enough to cause the suspicion to become stronger that money was being used for illegal purposes. This reminds one of the search a few days later, conducted at the house of Cethegus, resulting in the discovery of a store of arms, and thus confirming the belief that the conspiracy of Catiline was soon to be launched. Servius Sulpicius Galba spoke on the subject of the centuries of the knights. It was scarcely to be expected that these centuries would vote for the plebeian Murena in preference to voting for the patrician Sulpicius, and the fact that they did so aroused suspicion of some unfair influence. One who

was engaged in offering bribes would naturally try to secure these votes, for the knights voted early in the course of the election, and their vote always had considerable effect upon the centuries that voted later.

Cato had something to say on all three parts of the accusation against Murena, but he seems to have devoted himself particularly to the immediate question of bribery. So far as relates to the private life of Murena, there is but one statement attributed to Cato, one that sounds strange to modern ears, namely, that Murena was a dancer. To understand this, it is necessary to remember that Cato refers to individual dancing for the entertainment of a group, and that it was considered disgraceful, and fit to be indulged in only by a hired actor. Cicero regards this as a serious charge, and says that a citizen who would engage in dancing is one who would be guilty of any kind of wicked and immoral conduct. And this seems to have been the feeling of the Romans generally. Thus Nepos says that dancing was considered to be a disgraceful action among the Romans, although in the eyes of the Greeks it was pleasing and worthy of approval. Cicero himself makes the same accusation against a consul a few years later, and classes the act among those that are unworthy of a freeman, or of one who is sober. "Who in those days," he says, "ever saw you sober, or doing anything worthy of a freeman, when the house of your colleague resounded with song and cymbals, and he himself danced naked at a banquet?" The only forms of dancing that were recognized as reputable were the military dance and that which took place in religious ceremonies. In connection with the services of Murena to the state, in comparison with those of Sulpicius, Cato holds that the war against Mithridates was a war against little women, and therefore the exploits of Murena were not of sufficient consequence to win him the favor of the voters in Rome. It is rather distinctly implied in the words of Cicero that Cato declared that all wars conducted against Greeks and Asiatics were trifling and insignificant.

When Cato came to the subject immediately under discussion, namely, the crime of which Murena was accused, he divided that portion of his speech into three parts: First, he gave the reasons for his own participation in the accusation. Secondly, he spoke on

the topic of the recent debates in the senate on the question of bribery, and showed that the matters charged against Murena were the very points on which the senate had expressed its opinion. Thirdly, he treated of the necessity for preserving the state from the injuries inflicted by corrupt officials and corrupt candidates.

He felt strongly that men should be elected to office solely on the ground of merit, and that it was degrading to seek favor by free exhibitions of spectacles, or to appeal to men's appetites in order to gain their votes. Consequently he thought it his duty to protest against the excessive canvassing of Murena, and by means of this protest to endeavor to counteract the modern tendency to substitute personal persuasiveness, or personal influence, for genuine worth. These were his motives in assisting in the present prosecution. Then he dealt particularly with the definite evidence against Murena in connection with his mode of conducting his campaign. He pointed to the large number of followers who constantly attended Murena during this time. He told of the free spectacles offered to the people, and of the dinners to which Murena invited many citizens. All of these things were contrary to the resolution of the senate, passed upon motion of Lucius Caesar in the year 64, and contrary to the resolution of the senate in this very year, a resolution moved by Cicero the consul, but initiated, as everybody knew, by Sulpicius. The frequency with which the senate discussed the question of bribery and other corrupt practices showed that it was serious about the purification of politics; and in the midst of this discussion Murena was putting into practice all the acts of which the senate complained.

Cicero, in the final speech of the trial, makes reply to all four speeches of the prosecution. But it must be admitted that he treats in a most summary and unsatisfactory fashion several of the largest topics of the case. But Cicero has given what is probably to be regarded as a sufficient explanation of his omissions. "Quintus Hortensius has said many very severe things, and therefore my task now is the more difficult; for, after he had spoken before me, as well as Marcus Crassus, a man of the greatest dignity, and industry, and effectiveness as a speaker, I was to speak at the end, and not to plead on any special part of the accusation, but to deal with the

whole subject as I might think advisable." And again, referring to the specific charge of bribery, Cicero says: "The charge has been entirely refuted by those who have preceded me, but I must still discuss it, for that is the wish of Murena." Evidently he was given the task that was often assigned to him of handling in the most effective way the points that had already been the topic of argument by counsel, in order that his great skill in working upon the emotions of his hearers might dispose the minds of the jury in favor of his client just before they were to vote upon the issue.

On the first point made by the prosecuting attorneys, that the early life of Murena was not of a kind to bring him into the notice of the citizens, and that he was in some degree corrupt, Cicero is dealing with a topic to which he is partial. He insists that this should be the most important of all the issues raised by the prosecution, but that they had treated it in a very trifling way. During his career at the bar, Cicero several times expressed his belief that the most satisfactory answer to a criminal accusation consisted in proving that the life of the accused, up to the time when he fell under suspicion, had always been above reproach. This is notably the case in his reply to the charge that Publius Cornelius Sulla was concerned in the conspiracy of Catiline. In reply to the charge of Sulpicius that Murena had spent his early years in Asia, and that he had accomplished nothing whatsoever, but had merely participated in the spectacle of his father's triumph, Cicero characterizes the whole charge as false. He had been of very active assistance to his father, and had assumed his full share of the responsibility. He had, indeed, been present in the triumph of his father, but no objection should be raised to that, when many mere boys had often been seen in the triumphal processions of their fathers. After his quaestorship, Murena returned to Asia to serve under Lucullus, and there his commander-in-chief often placed him in charge of forces to perform some special duty. The official dispatches of Lucullus proved that he accomplished these most satisfactorily. At the same time, his private life in Asia was one of the greatest moderation. Asia was a province exposing one to all manner of temptation, and it was much to the credit of Murena that he held himself aloof from every excess. The accusation of Cato, that

Murena was a dancer, was, therefore, absurd, and but an abusive expression, for such a thing is found only as the accompaniment of drunken revels and of lewdness. These things were not alleged against Murena, and therefore the charge of dancing must be seen to be unfounded.

When Cicero reached the discussion of the qualifications of the two men for office, he first attacked vigorously the position of Sulpicius, who claimed that it was unreasonable to suppose that a man of plebeian origin should be preferred to himself. Cicero grows impatient of such comparisons, saying that this kind of arrogance had once led to the secession of the plebs, and might again lead to incalculable injury to the state. And yet he derives considerable satisfaction from the successful effort he makes to turn the tables on Sulpicius on the very point of his attack. It is true, he admits, that Murena is of plebeian origin, but his great-grandfather and his grandfather had both been praetors, and his father had been praetor, and had won a triumph in addition. In the meanwhile, what had the family of Sulpicius been doing? They had once been famous, but for two generations had done nothing of any consequence whatever in the state. Cicero was therefore accustomed to place the present Sulpicius in the class of new men, along with Murena and Cicero himself, for Sulpicius was rising from obscurity just as they were. Then he gives Sulpicius another delightful blow, this time on the ground of tact; for he says that he did not expect that Sulpicius would be so ungracious as to advance an argument on the subject of birth in a case where a consul, a new man, was defending a consul-elect, also a new man.

Sulpicius claimed that the forum was the only place that qualified for office, and that Murena had been absent from Rome for many years, and had not adopted the kind of life that would fit him for office, or make him personally known to the electors. Cicero meets this by declaring emphatically his belief that military renown is of greater aid in reaching the consulship than is a knowledge of the civil law. In fact, the civil law is the least likely of all the public professions to win the sympathy and approval of the voters. The soldier gains the favor of the people most quickly, and next to him stands the orator. But the civil law has too many

transparent absurdities to give a man a reputation. "As soon as the suspicion of disturbance has made itself heard, instantly our arts become silent." Cicero here indulges in good-natured raillery directed against the profession of Sulpicius. He ridicules the complicated and meaningless procedure in civil cases; he jeers at the foolish phraseology of the civilian; and he charges that the letter of the law has become far more important than justice. Nor is there very much learning in that profession: "If you arouse my anger, busy though I am, I will undertake to become a lawyer in three days." It is worth noting that Cicero rarely appeared in civil cases, and that he regarded his participation in criminal cases as a part of the function of the orator rather than of the lawyer.

But Sulpicius said that he and Murena had been opponents for the offices of the quaestorship and the praetorship, and in both instances his name had been announced first, since he was the first to secure the number of votes requisite for election. And so it was incredible that there should be such a change when the election to the consulship arrived. Cicero makes the very interesting reply that no attention should be paid to the order of election, for a choice by the people is too much a matter of chance or whim to be regarded as indicating permanent favor or popularity. "A single day, or a single night, may intervene, and everything is thrown into confusion. Sometimes the slightest breath of rumor changes the whole opinion of the voters. Often without any apparent cause things happen quite contrary to your expectation, so that the people themselves wonder what has taken place, as if they were not responsible for it." Furthermore, Murena had two special advantages in his canvass for the consulship. It was rumored that he would give magnificent games for the people; he had never been aedile, and so had lost this opportunity for drawing attention to himself earlier. And in the second place, many soldiers of Lucullus were now in Rome, and they voted for Murena, and were telling others of his good qualities. It was not surprising, therefore, that Murena was elected in preference to Sulpicius.

Cicero then reviews the history of the two men during the period of their holding the minor offices. The quaestorship gave neither of them an opportunity to extend his influence, or to add to his popu-

larity. When the duties of the quaestors were assigned by lot, Murena was given a task that could be conducted in a quiet and orderly fashion, whereas "you were assigned duties at Ostia, the very name of which is received with grumbling, for the work is laborious and disagreeable, and confers no popularity nor distinction." But it was in the year 65, the time of the praetorship of the two men, that an occasion arose for a change in the feelings of the people. Murena had been city praetor, a position which gives an opportunity for making many friends; Sulpicius had been in charge of the court of peculation, which always makes enemies. Immediately after their praetorship, Murena went to a province, and gained a reputation in Umbria and Gaul. Sulpicius had refused a province. Nothing could be said against the decision of Sulpicius to avoid being absent from Rome, for Cicero had himself refused provinces, both after his praetorship and now when he was consul, but it was one opportunity for gaining favor, and Sulpicius had neglected it.

Coming next to the time immediately prior to the consular election, Cicero shows that the conduct of the two men differed fundamentally. Murena devoted himself exclusively to the task of winning votes, while Sulpicius spent too much time watching the actions of Murena, and threatening him with prosecutions because of infringement of the laws on corrupt practices. This attitude quickly brings unpopularity, for the electors realize that a candidate conducts himself in this way only when he knows himself to be defeated. There is no advantage in voting for a candidate who already admits defeat. It was also very recently that Sulpicius had proposed a new law on the subject of bribery. The terms of this law were exceedingly severe, and caused Sulpicius the loss of such popularity as he had enjoyed before. As a result of these two things, the people perceived that Sulpicius could not be elected, and, becoming alarmed lest Catiline should gain the consulship, gave their votes most decidedly for Murena.

Cicero here brings his reply to Sulpicius to an end, and devotes much of the remainder of his speech to Cato. He first warns the jury not to be influenced against Murena by the nobility of character and the fine reputation possessed by his accuser, nor by the high expectation of his tribuneship. At the same time he warns Cato

not to expect a victory because of his character and reputation, for even Africanus once, when at the height of his popularity, had failed in his prosecution of Cotta. But Cicero does not mention the persistent rumor that Cotta had succeeded by the use of technicalities in having his trial seven times postponed, and had finally escaped by lavish bribery of the jury. Then Cicero expresses his feeling about the influence of the personality of the pleader: "I don't like an accuser to bring into a criminal court his personal power, or unusual influence, or eminent authority, or great popularity."

It was Cato who enumerated the definite acts with which Murena was charged. He had said that these things were contrary to the terms of the Tullian law, and contrary to the conviction of the senate expressed earlier in this year during the debate on the proposal of Sulpicius, and expressed also in the debate of the year before on the proposal of Lucius Caesar. But Cicero points out that it was illegal for a crowd to meet a returning candidate and accompany him through the streets, only if the crowd was bribed for that purpose; it was illegal to have an escort while a man was candidate for office, if he hired his escort to attend him. Neither of these things could be proved against Murena. It was admitted by the defense that Murena had presented many persons with seats for the public spectacles, but the Tullian law declared this illegal only if a whole tribe, or all the tribes, were granted free spectacles. Cato declared that it was a disgrace and a national calamity to be obliged to appeal for men's votes through their feelings or appetites. But Cicero replies that this had always been the Roman custom, and yet the Roman state was in better condition than were those states in which such things were forbidden, as illustrated by the condition of Crete and Sparta. To the reader of the speech Cicero's discussion of this topic seems like the merest quibbling. If his own law really forbade treating of tribes, or giving them free exhibitions, it must certainly have been the intent of the law to abolish these abuses when conducted on a large scale, and Cicero's contention that Murena did not treat the whole tribe seems to mean only that some members of the tribe were absent. And yet Cicero seizes upon

this technical avoidance of the letter of the law, and breaks down the spirit which was the basis of its enactment.

He then makes a good-natured attack upon Cato, somewhat similar to his attack upon Sulpicius. It was not intended to be taken very seriously, and evidently Cato enjoyed it as much as Cicero did, for Plutarch says that when Cicero sat down, Cato turned with a smile to those who were near him, and remarked: "Gentlemen, what a witty consul we have!" Cicero rallied him on his high moral tone, and told him that he did not live up to his own profession of goodness. From several phrases used by Cicero, it seems clear that all of this was intended to influence the jury to take a more lenient attitude toward Murena. He shows that even the punctilious Cato had sought the assistance of his friends in the campaign just ended, thereby casting aside his doctrine that political preferment should depend absolutely upon merit. He had also descended to having a man accompany him during his canvassing, who would tell him the names of voters as he met them on the street. Then Cato could address them by name and shake their hand. But Cicero contends that this involves a form of deceit which placed even Cato on the level of ordinary men.

The final section of the speech contains a strong appeal to the jury to acquit Murena in the interest of the state. Cicero says that if Cato joined the prosecution for the sake of cleaner politics, so did he himself undertake the defense out of regard for the immediate future of the country. In the present condition of the conspiracy of Catiline it was essential that there be a strong successor to Cicero in the consulship. There was but one month of the year remaining, and it was impossible to hold a new election within that short time. The result of the conviction of Murena would be that the state would enter upon the next year, a critical year, without a colleague for Silanus in the consulship. It was essential also for the success of the tribuneship of Cato that Silanus be not left as sole consul, for already the opposition of Metellus to Cato was manifest. The party of Metellus sought to destroy Cato, and they could accomplish their purpose unless there were two consuls to support him.

A more direct appeal to the jury is found in the warning that they must not decide the case as Catiline would wish it to be decided. The jury would find that they would be in personal danger, if there were but one consul for the following year, and if the war against Catiline could not be ended during the present year. In that case, the one consul would be obliged to devote himself to the election of a colleague, and could not give attention to the war against Catiline. The last appeal is on the ground of pity. Murena was sick, and the disgrace of the loss of the consulship, together with the disgrace of exile, should not come to him. The jury should remember that Murena was the first to bring the honor of the consulship to an old and respected family, and to an ancient principality.

It is well known that Murena was acquitted, and assumed office on the first of the following January. It is to be noticed that he was then well enough to undertake the duties of the consulship, in spite of the fact that he was so ill at the time of his trial a month earlier. And it is further noteworthy that there is no evidence that he was called upon to take the field against the forces of Catiline. The appeals to the jury for mercy, however, need not be taken as indicating a weak case, for that was but a habit of Cicero, recognized by his contemporaries as well as by modern students of Cicero. Whether the jury was convinced of the innocence of Murena, or whether they were influenced by the necessity for having a consul of tried military experience to assume office in the turmoil of the year, cannot be ascertained, owing to the insufficiency of the records of the case.